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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 Imelda Del Rosario,

12 Plaintiff,

13 v.

14 Yakte Properties, LLC, et al.,

15 Defendants.
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No. 2:21-cv-01304-KJM-JDP

ORDER

17 In its most recent order, the court dismissed plaintiff Imelda Del Rosario's Unfair
18 Competition Law (UCL) claim and noted "private plaintiffs can pursue [UCL] claims only if they
19 have lost money or property as a result of the challenged business practice." Second Order at 3
20 (citing Cal. Bus. & Prof. Code § 17204), ECF No. 19. Because plaintiff did not explain what
21 money or property she lost as a result of defendant Yakte Properties, LLC's alleged wrongdoing,
22 the court dismissed the claim with leave to amend. *See id.* Plaintiff amended her complaint. *See*
23 Second Am. Compl. (SAC), ECF No. 20. Defendant Yakte Properties again moves to dismiss the
24 UCL claim for failure to state a claim under Rule 12(b)(6). *See* Mot. Dismiss, ECF No. 23;
25 Mem., ECF No. 24. Plaintiff filed an untimely opposition.¹ *See* ECF No. 29. Yakte Properties

¹ Given the importance of reaching the merits in a dispositive motion such as this one, and because defendant is not prejudiced by the court's considering plaintiff's untimely opposition, the court **overrules** defendant's objection and considers plaintiff's untimely opposition in the interest of justice.

1 replied. *See* ECF No. 31. The court held a hearing on April 15, 2022. *See* Minutes, ECF No. 32.
 2 Bryan Fairman appeared for Yakte Properties. *Id.* Plaintiff’s counsel, Timothy McFarlin, did not
 3 appear. *Id.* As explained below, the motion is **granted**.

4 A motion to dismiss for failure to state a claim under Rule 12(b)(6) may be granted if the
 5 complaint’s allegations do not “plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*,
 6 556 U.S. 662, 679 (2009). The complaint need contain only a “short and plain statement of the
 7 claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), not “detailed factual
 8 allegations,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). But this rule demands more
 9 than unadorned accusations; “sufficient factual matter” must make the claim at least plausible.
 10 *Iqbal*, 556 U.S. at 678. Conclusory or formulaic recitations of elements do not alone suffice. *Id.*
 11 (quoting *Twombly*, 550 U.S. at 555).

12 Like her First Amended Complaint, plaintiff’s Second Amended Complaint does not
 13 claim she lost money or property as a result of defendants’ allegedly unlawful actions. *See*
 14 *generally* SAC; *see also Birdsong v. Apple, Inc.*, 590 F.3d 955, 959 (9th Cir. 2009) (“To have
 15 standing under California’s UCL . . . plaintiffs must establish that they (1) suffered an injury in
 16 fact and (2) lost money or property as a result of the unfair competition.”). Plaintiff does not
 17 allege lost money: though she alleges inappropriate charges have been assessed, plaintiff has not
 18 paid the charges. *Cf. Zeppeiro v. Green Tree Servicing, LLC*, 2015 WL 12660398, at *11 (C.D.
 19 Cal. Apr. 15, 2015) (“The fact that [plaintiff] does not allege that he paid defendants any of the
 20 additional arrearages, late fees, foreclosure fees, or interest charges . . . makes his UCL claim
 21 deficient.”). Nor does plaintiff allege that defendants’ conduct, rather than her own default, will
 22 cause her to lose property. *See Greene v. Wells Fargo Bank, N.A.*, No. 15–cv–00048, 2015 WL
 23 12952701, at *3 (N.D. Cal. Nov. 30, 2015) (standing lacking under UCL when homeowner’s
 24 default preceded defendant’s wrongdoing). Rather, plaintiff alleges defendants’ wrongdoing
 25 caused her to forgo “alternative loans and refinancing,” SAC ¶ 51, and that she was “denied the
 26 opportunity to make a knowing and intelligent decision,” *id.* ¶ 53. These statements indicate only
 27 that plaintiff was denied the opportunity to “shop around”; such an allegation is insufficient to
 28 support a UCL claim. *See Johnson v. Wal-Mart Stores, Inc.*, 544 F. App’x 696, 697–98 (9th Cir.

1 2013) (unpublished) (contrasting nine-dollar overpayment, which supported UCL claim, with lost
2 ability to “shop around,” which did not).

3 Plaintiff’s UCL claim is dismissed. Because plaintiff did not correct this claim’s
4 shortcomings in her amended complaint, the court dismisses this claim **without leave to amend**.
5 *See, e.g., Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013) (affirming dismissal
6 without leave to amend because plaintiff did not correct error district court previously identified).

7 The court **denies** Yakte Properties’ Request for Judicial Notice, ECF No. 25, as moot; the
8 court did not rely on the contents of those documents to resolve the present motion.

9 This order resolves ECF Nos. 23 and 25.

10 IT IS SO ORDERED.

11 DATED: April 19, 2022.



CHIEF UNITED STATES DISTRICT JUDGE